

BEFORE THE ARBITRATOR

In the Matter of the Petition of

CITY OF GREEN BAY

To Initiate Arbitration Between Said
Petitioner and

LAW ENFORCEMENT PERSONNEL,
GREEN BAY PROFESSIONAL POLICE
ASSOCIATION

Case 482 No. 71854

MIA-3055

Dec. No. 34067-A

Heard: 7/29/2013

Record Closed: 9/30/2013

Award Issued: 11/25/2013

Sherwood Malamud

Arbitrator

APPEARANCES:

Davis & Kuelthau, S.C., Attorneys at Law, by Geoffrey A. Lacy, 318 S. Washington Street, Suite 300, Green Bay, Wisconsin 54301, appearing on behalf of the Municipal Employer.

Cermele & Matthews, S.C., Attorneys at Law, by Jon Cermele, 6310 West Bluemound Road, Suite 200, Milwaukee, Wisconsin 53213, appearing on behalf of the Association.

ARBITRATION AWARD

Jurisdiction of Arbitrator

The City of Green Bay, hereinafter referred to as the City or the Employer, and the Green Bay Professional Police Association, hereinafter referred to as the Association or the Union, selected Sherwood Malamud from a panel of names submitted to them by the Wisconsin Employment Relations Commission to hear the within interest arbitration dispute. On March 18, 2013, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to determine this dispute involving this unit of law enforcement personnel and to issue an Award pursuant to Sec. 111.77(4)(d) of the Municipal Employment Relations Act. Hearing in the matter was held on July 29, 2013, in the Green Bay City Hall in Green Bay, Wisconsin. A transcriptual record of the proceeding was made. The parties submitted original and reply briefs by September 30, 2013. This Award is issued pursuant to Sec. 111.77(4)(b) Form 2 in that:

The Arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

THE ISSUES IN DISPUTE AND BACKGROUND

	City Offer	Union Offer
Duration	4 years 1/1/12 - 12/31/15	2 years 1/1/12 - 12/31/13
Wages	0 in 2012 0 in 2013 2% effective 8/24/14 Adtl 4% effective 2/22/15	1.61% 1/1/12 0.33% 1/1/13 1.53% 4/1/13 Adtl 0.29% 7/1/13 Adtl 2.89% 12/30/13
WRS Contributions	Effective 6/30/13: Officers hired prior to 7/1/11 shall make the same WRS contribution as general employees (pay the full employee share for WRS contribution). [Any retroactive employee WRS contribution due to the City will be deducted from the officer's pay in equal installments over the remaining payroll periods in the 2013 calendar year. If an officer leaves employment prior to paying back the retroactive employee WRS contributions, the amount due to the City will be deducted from the officer's final paycheck.]	Effective 1/1/12: 1.61% (of the 5.9% employee share). Effective 1/1/13: An additional 0.33% for a total of 1.94% of the employee share (6.65%). Effective 4/1/13: An additional 1.53% bringing payment of the employee share to 3.47%. Effective 7/1/13: An additional 3.18% bringing the contribution to the percentage equivalent of the full contribution towards the employee's share). After 7/1/13, WRS contributions to equal employee's share for public safety/protectives, as determined by WRS, capped .

<p>Health Insurance</p>	<p>Effective at the beginning of pay period following date of arbitration award, City to pay 85% of single or family premium. Employees may reduce their health insurance premium contribution up to a maximum of 2.5% per year by successfully participating in the wellness incentive program as follows: <u>Family</u>: Both employee and spouse participate in the HRA (health risk assessment). <u>Single</u>: Employee participates in the HRA. <u>Family</u>: Reduced by 1.25% if only the employee or the employee's spouse participates in the HRA.</p>	<p>The Union proposes the same percentage contributions and credits for participation in the wellness incentive program as the City. However, the Union proposes to state the percentage contribution as a dollar equivalent and then cap the employee contribution at the 2013 level which the dollar equivalent for single is \$90, with HRA participation \$75. Family employee share is \$218. The HRA payment by employees amounts to \$199.84 with both employee and spouse participating and \$181.67 with only one of the two participating. The total monthly premium for health insurance in 2013. Single coverage: \$600 per month Family coverage: \$1453.37 per month</p>
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Dental Insurance	Employee is to pay 12.5% and the City will pay 87.5% of a single or family premium.	The Union states the percentage contribution in the form of a dollar equivalent. In 2013 the total monthly premium for single dental coverage is \$38.73 and for family \$117.66. The 12.5% employee share stated as a dollar amount for single is \$4.84 monthly and for family it is \$14.71 monthly. The Union offer contains an additional provision “reopener” for purposes under this article when and if the Court of Appeals reverses Judge Hammer’s December 10, 2012 Decision with regard to Section 111.70(4)(mc)6, Stats., and the financial exposure to bargaining unit members resulting from a municipality’s “design and selection” decision.
Uniform Allowance	Increase allowance by \$100.	Status quo.

Source: Arbitrator’s summary based on City Exhibit Tab 5 and City Initial Brief, p.2.

BACKGROUND

Introduction-The Dispute’s Context

The Arbitrator has carefully considered the 150 pages of argument presented by the parties in their initial and reply briefs. The Arbitrator carefully reviewed the 300 page transcript of the hearing and the exhibits received in evidence in rendering this Award. The Arbitrator relates the parties arguments where pertinent to the discussion. The Arbitrator does not separately summarize the parties’ arguments under a separate heading, Positions of the Parties.

The City of Green Bay has established long-term relationships with the Unions that represent its employees. City Exhibit 2 Tab 17A sets forth the historical wage settlements for law enforcement personnel, the bargaining unit that is the subject of this arbitration, and the Firefighter unit, other bargaining units of employees categorized in Act 10 as general municipal employees.¹ Between 1991 and 2011, with the exception of two times, the Firefighter and Police units had settled wages at the exact same percentage increase. In 1994 and 1995, the Firefighter settlement exceeded the Police settlement by 1/100 of a percent and 6/100 of a percent in 1995. Otherwise, over the 20 year period the settlement pattern has been consistent between these two units.

Furthermore, the internal pattern of settlement among all units has been consistent in terms of the percentage increase in wages that each category of employees achieved in negotiations with the City. Due to the economic downturn that began in 2008, the record evidence demonstrates that all employees received no increase in compensation in 2009. All units received a 2% increase effective June 2010 and a 2.5% increase for all bargaining units in 2011.

With the passage of Acts 10 and 32 by the legislature in the first half of 2011, the City suffered a reduction in state aid and shared revenue. The City planned to impose furlough days and a hiring freeze in order to weather these changes and balance its budget. The City sought and obtained from its general municipal employees a commitment to pay the employee share of Wisconsin retirement effective July 1, 2011. The general municipal employee unions agreed to pick up the employee share of the contribution to retirement as part of a 3-year agreement that expires on December 31, 2013.

The Firefighter unit and Transit employees² agreed to pay the full employee share for retirement beginning January 2012. As a result of these actions, no furlough days were actually imposed. The hiring freeze put in place in 2011

¹Acts 10 & 32 went into effect by mid-2011.

²Full collective bargaining rights of Transit employees continue in effect.

continued through calendar year 2012. The City argues the hiring freeze would have ended earlier in 2012 had the Police unit agreed to begin payment of the entire employee share of the retirement contribution, when other employee groups did so.

Instead, the final offers fashioned by the City, on the one hand, and the Association, on the other, reflect their approach to the legislation that requires that new Police hires, those hired after July 1, 2011, pay the full contribution of the employee's share for retirement. In the protective service bargaining units, police and fire, the legislation did not mandate that those hired prior to July 1, 2011, pay any or all of the employees' share of the Wisconsin retirement contribution. However, general municipal employees including administration and non-represented employees were required to pay the full employee share on and after July 1, 2011.

Payment of the employee share of retirement, which in 2012 amounted to 5.9%, meant that the full pick-up of the employee's share of the contribution to retirement reduced the net income of employees by that amount. As a result of the reduction in state aids and shared revenue, the City suffered a loss of shared revenue from \$18 million to approximately \$16.5 million. This loss of \$1.5 million created a financial hole. The City proposed a zero increase in wages in 2012 to address the reduction in shared revenue and state aids. All of the organized employees of the City of Green Bay, with the exception of this Police unit, accepted the proposed zero increase in compensation and absorbed the 5.9% reduction in compensation that was entailed by their absorbing the full payment of the employee share towards Wisconsin retirement in calendar year 2012.

The problem addressed by each party in their respective final offers is how and on what timetable each proposes to absorb payment of the employee share of the retirement contribution.

The City maintains that its offer to the Association is consistent both in timing and the level of wage increases it agreed to in bargaining with Firefighter and its other employee groups. The City's offer spaces wage increases to the

nearest pay period by approximately 15 months after the Police unit absorbs the payment of the full employee share to retirement.

The Firefighters paid the full employee contribution on January 1, 2012 and they receive the first pay increase in April 2013. The City incorporated those elements, the zero wage increase in 2012 and the absorption of the full payment towards retirement, in its structuring of its final offer. The City proposes a zero increase in 2012 consistent with the zero increase it provided all other employees in 2012. It proposes a zero increase in compensation in 2013 to the Police, despite granting Firefighters a 2% wage increase in April 2013 and a 2% wage increase to general employees in October 2013. Since Green Bay Police officers would not be assuming their full share of the employee contribution to retirement, 6.65%, until July 1, 2013 under either the Union or City offers, the City offers wage increases to police officers 15 months (based on payroll periods) after they assume the full contribution to retirement, in August 2014. To increase Police wage levels, the City proposes a four year agreement with a 4% wage increase effective February 2015.

Under the Union offer, it attempts to offset the negative effect on net take home pay that contributing to the employee share of retirement, by offsetting the amount of that contribution by a similar percentage increase in wage rates. So, in 2012, effective January 1, the Union proposes a wage increase of 1.61% which offsets the increase from no contribution by law enforcement personnel toward Wisconsin retirement in 2011 to assuming 1.61% of the 5.9% full contribution towards retirement in effect in 2012. Then, on January 1, April 1 and July 1, 2013, the Association proposes increase in wages and in its contribution to retirement on the following schedule. The Union proposes a 0.33% increase in its contribution from 1.61% that Police officers would pay in 2012 under its offer, by increasing that amount by 0.33% to 1.94% effective January 1, 2013. Then, the Union proposes increasing that contribution by 1.53% for a total contribution by April 1, 2013 of 3.48% towards the 5.9% full contribution level in effect in 2013 and then on July 1 increasing the employee share of the contribution towards retirement by 3.18% bringing the total to the full contribution towards retirement in 2013.

The Union then proposes to limit the employee pick-up of the employee share of the contribution towards retirement at 6.65%. The City notes that the employee share of the employee share for retirement will increase in 2014 to 7%. The Union proposal to cap the employee share towards retirement results in the City picking up the 0.35% of the employee share toward retirement on January 1, 2014 just after the expiration of the Union's proposed 2-year Agreement for 2012 and 2013. The Union proposes a 2.89% increase independent of contribution to retirement to take effect on December 30, 2013, two days prior to the expiration of its proposed 2-year Agreement.

The City argues that the full effect of the 2.89% increase impacts calendar year 2014. Under the Union proposed 2-year duration, the parties would be required to enter into negotiations to establish the wages and benefits for Police officers in 2014 and for the period thereafter.

Health and Dental Insurance

In the description of the parties' final offers, the Arbitrator details the structure of the Union offer, its conversion of the percentage contribution to premiums to a dollar equivalent and then capping that dollar amount so that any increase in the cost of premium would be a matter that would be the subject of negotiations for a successor agreement for 2014 and years subsequent.

The City maintains the Legislature precluded bargaining over the design of the health insurance package and its impact. The City argues that the Union offer does not conform to the statute. In essence, the City argues that the Union has submitted an illegal offer in arbitration.

It has long been the view of this Arbitrator that the legality of an offer is a matter that should be raised during the WERC investigation. Once the parties do not object to the certification of final offers, this Arbitrator assumes that each offer conforms to all statutory requirements.

In this case, the parties litigated the issue of the scope of bargaining over health insurance before Judge Hammer in Brown County Circuit Court. Although Judge Hammer's order and decision were not included in the record before the Arbitrator, Judge Hammer further issued a Writ of Mandamus that provides, in material part, as follows:

1. Comply with the terms of its (sic) own resolution which adopted the 2009-2011 Labor Agreement between the City of Green Bay and the Green Bay Professional Police Association with respect to health and dental insurance provided to members of the Green Bay Professional Police Association;
2. Comply with the terms of the 2009-2011 Labor Agreement between the City of Green Bay and the Green Bay Professional Police Association with respect to Health and dental insurance identified therein;
3. NOT to impose health insurance deductibles, co-pays, prescriptions costs, etc., against members of the Green Bay Professional Police Association other than agreed to (and contained in) the 2009-2011 Labor Agreement, until such time as the City of Green Bay and the Green Bay Professional Police Association enter into a new Labor Agreement, whether by means of bargaining or arbitration;

The pertinent statutory language concerning bargaining over health insurance appears at 111.70(4)(mc)6, as follows:

Prohibited subjects of bargaining; public safety employees.
The municipal employer is prohibited from bargaining collectively with a collective bargaining unit containing a public safety employee with respect to any of the following:

. . .

Except for the employee premium contribution, all costs and payments associated with health care coverage

plans and the design and selection of health care coverage plans by the municipal employer for public safety employees and the **impact** of such costs and payments and the design and selection of the health care coverage plans on the wages, hours, and conditions of employment of the public safety employee. (Emphasis added)

Although the parties are litigating the meaning of this statutory language, the City includes health insurance costs in the base year 2011 and in its calculation of the total cost of wages and benefits for the duration of both the Association's and the City's proposals. Health insurance has been a driving force of the increase of wage and benefit costs for at least 10 years. It stands to reason that the parties would take those costs and the impact of those costs into consideration in costing their proposals in this arbitration proceeding. However, the statute states that health insurance and the **impact** of the costs of plan designs and health insurance on employee wages, hours, and conditions of employment are prohibited subjects of bargaining. That is in essence the core issue the parties are litigating in the Court of Appeals.

The Arbitrator has a responsibility to apply the statutes to the parties' final offers and select the final offer for inclusion in a successor to the three-year 2009-2011 Agreement. In the analysis that follows these introductory remarks, the Arbitrator excludes all reference to the costs of health insurance in the base year 2011 and in the subsequent years 2012 and 2013 under the Union's proposal and 2012 through 2015 under the City's final offer. In doing so, the Arbitrator removes health insurance as an independent issue that would serve as a basis of comparison of the parties' final offers and selection of one offer over the other. In this manner, the Arbitrator conforms his analysis to the legislative intent to exclude the costs of health insurance from collective bargaining that occurs between a municipality and the representative of its law enforcement unit. Although the insurance plan and design has a cost impact, neither the City nor the Association may claim "credit" for those costs in the context of the arbitral selection of the preferred final offer for inclusion in a successor agreement.

The Arbitrator finds the Association argument that collective bargaining and interest arbitration are separate and independent of each other unpersuasive. The Association maintains that the Legislature intended that the municipal employer and a union refrain from bargaining over the costs of health insurance. The Association argues that interest arbitration is not part of collective bargaining and is independent of it.

The consequence of the Association argument is that the Legislature would exclude from negotiations between a public safety collective bargaining representative and municipal employer discussion about the costs of health insurance plans and designs. However, once the matter moved to arbitration, the arbitrator would base his decision, in part, on a subject that the Legislature excluded from serving as the basis for discussion between the parties. If the Arbitrator were to adopt the Association argument, the statute would countenance a system in which an interest arbitrator could select a final offer and thereby impose proposals concerning health insurance contrary to a plan designed and costing adopted by the municipal employer. Worse yet, the parties would not have discussed their differences due to the prohibition on bargaining on the subject of health insurance. The arbitrator would only determine the issue, because collective bargaining and arbitration are separate and distinct according to the Association argument. Since this whole matter is on appeal, the Arbitrator need not address it further in this Award.

In this case, the Association agreed to the premium levels proposed by the City. The one issue that is a proper subject of bargaining is not at issue, here. The matter of the conversion of the percentage contribution to premiums stated as a dollar equivalent is the subject of the litigation before Judge Hammer and the Court of Appeals. If the parties wanted this issue determined by the Arbitrator, they could have done so through litigation of the issue before the WERC through the certification of final offers and the issuance of declaratory rulings. A multiplicity of decisions on the same issue will only cause delay and undermine the finality that interest arbitration is designed to bring to this dispute.

The Association notes that overall compensation and generally Section 111.77 remain unaltered by Act 32. Although the Arbitrator does not interpret the legislative language, the analysis below excludes health insurance as a totally separate subject of analysis. The Arbitrator does consider health insurance in the context of his discussion of the factor, "Overall Compensation."

The Arbitrator has not taken into account the costs of health insurance or any of the proposals concerning caps for dental and for health insurance, the conversion of the employee contribution to a dollar equivalent, and the various other elements contained in the Union's final offer. The Arbitrator's selection of the final offer to be included in the successor agreement is independent of the health insurance issue. No matter how the litigation before the Court of Appeals proceeds on the matter of the interpretation of the statutory language, it should have no effect on this award which is determined independent of the health insurance proposals.

Other Issues

The City proposes a hundred dollar increase in uniform allowance for police officers. The Arbitrator finds that the impact of this proposal is insufficient to affect the outcome in this case.

The Union proposes a reopener clause should the Court of Appeals reverse Judge Hammer's decision concerning the meaning of the statutory language quoted above. The Union proposes a two-year Agreement that expires approximately one month after the issuance of this Award. It is the City offer that would continue to run in calendar years 2014 and 2015, in which a proposal to reopen the agreement would be appropriate. However the City makes no such proposal.

In the context of a two-year agreement, the reopener as proposed by the Union appears to be superfluous. This issue is one that does not lend itself to analysis under the statutory criteria. Should the Arbitrator select the Union's

proposal, the reopener would be adopted. Should the Arbitrator adopt the City's final offer, it will not be adopted.

The statutory criteria employed to determine the preferred final offer for inclusion in a successor agreement reads as follows:

**STATUTORY CRITERIA TO BE UTILIZED BY THE
ARBITRATOR FOR MUNICIPAL EMPLOYERS AND
PUBLIC SAFETY EMPLOYEES**

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.77(6), Wis. Stats., as follows:

“(6) (am) In reaching a decision, the arbitrator shall give greater weight to the economic conditions in the jurisdiction of the municipal employer than the arbitrator gives to the factors under par. (bm). The arbitrator shall give an accounting of the consideration of this factor in the arbitrator's decision.

(bm) In reaching a decision, in addition to the factors under par. (am), the arbitrator shall give weight to the following factors:

1. The lawful authority of the employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
4. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

- a. In public employment in comparable communities.
 - b. In private employment in comparable communities.
5. The average consumer prices for goods and services, commonly known as the cost of living.
 6. The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
 7. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
 8. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.”

APPLICATION OF STATUTORY CRITERIA

Economic Conditions

Section 111.77(6)(am) provides that the Arbitrator give greater weight to the economic conditions in, this case, Green Bay than the weight the Arbitrator gives to all the factors under paragraph (bm), the eight factors listed above. The parties presented extensive evidence concerning the economic conditions in the City of Green Bay for 2012 and 2013. It is on the basis of the evidentiary record that the Arbitrator makes the following findings and conclusions.

Under the statute quoted above, the Arbitrator must accord greater weight to the economic conditions in Green Bay than the weight accorded to the eight factors listed in (bm). The statute does not specify how much weight economic conditions should receive so long as it is greater than the weight accorded factors 1 through 8 listed under (bm) of the statute. Green Bay like most of the U.S. and the State of Wisconsin experienced the downturn in late 2008 and in 2009 and a slow recovery from that downturn. In fact, in 2009, the City afforded all its employees no wage increase. In 2012, the City reached agreement with all its bargaining units and provided administrators no wage increase, with the exception of the Police unit that is the subject of this arbitration. In 2012, the City acted in response to the \$1.6 million decrease in shared revenue and the approximately \$600,000 reduction in transportation and a recycling grant in 2012. The hiring freeze and the zero wage increase to all other employees of the City (other than this Police unit) is the manner in which the City balanced its budget in the face of these reductions in funding from the state of Wisconsin. The City maintains that the criterion economic condition of the City favors its position because through its offer it acts in a manner consistent with the steps it took with all its other employees. In this manner, the City is able to stay the course.

The Association introduced testimony from a private economist, Dr. Ward, concerning the financial state and condition of the City. The Association points to the State of the City Addresses by Mayor Schmitt accompanying his proposed budgets for 2012 and 2013. The City managed to reduce debt by \$8.5 million in 2011 and another \$7.5 million in 2012. The Association notes that equalized value of property increased by some \$116 million. It points to large construction projects totaling \$130 million including the construction of the new corporate headquarters for Schreiber Foods at the downtown Green Bay Mall and the construction of new headquarters for Associated Bank. Employment is up in 2012 by 2.2% over the level in 2011. Unemployment for the metropolitan statistical area between 2008 and 2013 went down from a high of 8.1% to 5%. The City enjoys a credit rating of Aa1 by Moody's. Although it is not the highest, AAA rating, it is one of the best credit ratings. The City itself is rated by organizations

that rate cities as one of the bright stars in the Midwest as attested to by the Association's expert witness, Dr. Ward.

Ward noted that the intangible factor of leadership provided by the Mayor adds to the favorable view of the Green Bay economy. Nonetheless, it is the Mayor who indicated that, in order to stay the course and continue increased development, the City must adopt policies that not only prevent tax increases but allow it to lower its mill rate.

The Mayor, in his testimony at the hearing, noted that, in the aggressive efforts made by the City to attract new business to locate in Green Bay, its main competition comes from surrounding suburban communities in the Green Bay area with much lower mill rates. Green Bay's mill rate is approximately \$9 and communities such as DePere at a little over \$6 and Ashwaubenon at around \$5 represent the stiffest competition that Green Bay encounters in attracting new businesses to the City itself. Businesses find that they can achieve the favorable public relations gain by locating in a suburb like Ashwaubenon or DePere and pay a much lower mill rate. The Mayor attempts to bring the City's mill rate closer to that of the suburban communities in order to enhance the attractiveness of locating in the City rather than in the surrounding suburban communities. Mayor Schmitt makes a strong case for the need to "stay the course" and make Green Bay more competitive in order to continue to attract new businesses to downtown Green Bay and increase the equalized value tax base and employment in the City itself.

The Arbitrator finds that the Association has made the stronger case that the economic conditions in the City of Green Bay are not only strong but continue to improve, and in the immediate future, they will continue to improve through the large construction projects scheduled to occur in 2014 and 2015. The Arbitrator finds that the improving economic conditions after the decline suffered as a result of the great recession of 2008/2009 and the stagnation in wage progression experienced by employees in the City of Green Bay, it is important for the employees to begin to share in the improvement in economic conditions that are

developing. For those reasons, the Arbitrator finds that the factor economic conditions should receive and the Arbitrator accords the factor economic conditions much greater weight than the weight accorded to the factors in (bm). The Arbitrator attributes most of the weight of this factor to the Association's position. Perhaps a numerical example will help to quantify the Arbitrator's analysis in this regard. If the total weight of the application of all criteria were accorded 100 points, then the economic conditions in the City of Green Bay, because of the transition and improvement that is occurring from that period of downturn, the Arbitrator attributes 60 of those 100 points to the factor economic conditions. Of those 60 points, the Arbitrator awards 35 to the Association's position and 25 to the City's position.

The economic conditions in the City do not as a single factor establish the size of the wage increase or the timing of the employee contribution to Wisconsin retirement that should occur. The factors 1 through 8 found in Section (bm) provide a better tool of analysis for establishing which final offer should be preferred on the basis of its conformance with these statutory criteria. However, the Association offer begins the remaining analysis in a strong position given the economic conditions in the City of Green Bay.

Standard Statutory Criteria

1. Lawful authority of the Employer

Although the City argues that parts of the Association's proposal on health insurance matters are illegal, neither party argued that the proposal of the other party presented a legal challenge to the lawful authority of the employer to implement³ the other party's final offer. The Association notes that the City is well below the taxing level of the City permitted by law. The Arbitrator finds that this criterion does not provide a basis for distinguishing between the final offers of the City and the Association.

³The City's legal challenge is not to the implementation of the Union offer but the legality of raising the issue in collective bargaining and as part of the Union's final offer.

2. Stipulations of the Parties

Similarly, both parties acknowledge in their argument that this criterion does not provide a basis for distinguishing between the final offers of the parties.

3. Interests and Welfare of the Public and the Financial Ability of the City to Meet These Costs

The City does not assert that it is unable to meet the costs associated with the Union's offer. The City has sufficient financial resources to meet the costs associated with the adoption of either offer.

The central rationale for the City's offer is two pronged: equity and morale. The City asserts that its final offer is structured in a manner so that the salary lift experienced by Police officers over the course of the four year term of the Agreement expiring at the end of December 2015, will bring the wage level of law enforcement personnel to a point that approximates the wage level of Firefighters at the conclusion of their agreement in December 2014. Under the City offer, Police achieve a salary below that of the Firefighters, but one which makes up a good deal of ground a year later in 2015.

The City justified this delay on equity grounds. The City emphasizes that Firefighters began to pay the full share of employee contribution towards retirement on January 1, 2012. As a result, the wage increase enjoyed by Firefighters under the negotiated agreement goes into effect 15 months subsequent to the Firefighter assumption of the full cost of the employee share of retirement in April 2013. The City's final offer to this Police unit similarly spaces the 2% wage increase 15 months after the assumption by law enforcement personnel of the full cost of employee share of retirement on July 1, 2013.

The Firefighters received a 2% wage increase in April 2013. The City proposes that law enforcement personnel receive the 2% wage increase in February 2014. It is through this device, the approximate 15 month delay, that the

City provides wage increases that are consistent with the wage increases paid to Firefighters. At the same time, the City treats law enforcement and Firefighters and all other Green Bay employees in a consistent manner in terms of the decrease in the net pay that results from the City's paying the full employee share of retirement in 2011, 2012 and half of 2013 for Police, while general employees assumed those costs in July 2011 and Firefighters assumed the full cost of retirement in January 2012. Under the Union's and the City's offers, law enforcement will assume that responsibility for full retirement on June 30/July 1, 2013.

The Association counters this argument by highlighting the words suffer and delay that is so much a part of the City's final offer. The Association took the approach of gradually increasing employee contribution towards the full assumption of the employee share of retirement costs over time by contributing 1.61% in 2012 and then between January and July 1, 2013 assuming the balance of the employee share of retirement through increases spread out over that six month period. The contributions to retirement are offset by wage increases so that employees do not feel the full brunt of the assumption of retirement costs.

The Association argues that any blow to morale suffered by general municipal employees in Green Bay is the result of the enactment of Acts 10 and 32 that establish a two-tier wage structure in municipal employment between the protective services and other employees. The Association minimizes the extent its proposal to delay and transition the payment of retirement over a year and a half rather than assuming those costs all at once and doing so in the absence of any wage increase will have on the morale of other employees.

The Arbitrator addresses the City's equity argument under this criterion and in the context of the Arbitrator's discussion of the "Such other factors" criterion internal comparability. In the context of this criterion, the interests and welfare of the public, the arguments posed by the City concerning the impact adoption of the Union's offer would have on morale are not based on any hard data or surveys taken among employees. The City projects these arguments to

support arbitral acceptance of its position. This argument is mounted by the party, the City, that retains the money underlying the matter at issue. At the end of the day, Police will assume the full cost of retirement and experience the impact that has on net pay. The Arbitrator is not convinced that employee morale in other departments of the City would suffer if the structuring of the wage increases, would follow the Union proposal rather than the City's. This is particularly the case since the Police under its proposal would enjoy a wage level only \$70 plus greater than Firefighters by the end of 2013 as contrasted to the level paid to Firefighters at the end of their agreement in 2014. This wage level disparity is addressed more fully under the criterion "Such other factors" –internal comparability, below.

For its part, the Association asserts as a central theme in its rationale for the Arbitrator's adoption of their final offer the following argument. Law enforcement is more dangerous than firefighting. The Union introduced data on the kinds of injuries the employees in the two protective services suffered. The Union notes that Police officers must withstand intentional acts of assault with an intent to cause bodily injury to an officer. The upshot of this argument is that police officers deserve to receive salary increases on a more favorable schedule than the City offered to and granted its Firefighters.

The Arbitrator addresses this issue under this criterion. For anyone for whom the memory of September 11 is fresh, has a deep and abiding respect and deep sense of gratitude for the work performed by employees in the protective services. Wisconsin statute treats law enforcement and firefighting personnel differently than other public employees groups, in part, due to the universal sense of gratitude and appreciation the general public has for the work performed by these employees. The law treats the two groups of employees under the same statutory structure. For the Arbitrator to treat law enforcement and firefighting differently, because in a snapshot period more injuries and deaths are suffered by one group would tamper with the statutory structure put in place by the Legislature for law enforcement and firefighters in communities other than the City of Milwaukee. The Arbitrator demurs from so doing.

The Association argues that the interests and welfare of the public are better satisfied if police officers are adequately compensated, tax rates do not increase, and citizens are assured of the safety of the community in which they live.

The Arbitrator finds that this criterion is well met when services are provided and tax levels do not increase. The evidence in this record does not suggest that the adoption of either offer will require an increase in tax rates. The combined effect of the reduction in the monies paid by the City for contributions to the Wisconsin Retirement System on behalf of law enforcement personnel when considered together with the wage increases proposed under either offer, does not require the City to change its budgets for the duration of the agreement proposed by the Union, 2-years. With regard to the City's own offer, the impact of that offer is felt in the out years 2014 and 2015.

After careful consideration of the parties' arguments, the Arbitrator concludes that the application of this criterion does not serve to distinguish between the final offers of the parties and the selection of one of those offers for inclusion in the successor Agreement.

4. Comparability - External Comparables⁴

In the last interest arbitration between these parties, Green Bay Police Protective Association and the City of Green Bay (Police Department), Decision No. 29983-A, Arbitrator Chris Honeyman discussed the comparability issue and found that the differences between the parties at that time concerning comparable communities did not impact the outcome of his determination of the issues in that case. Here, the parties agreed upon the external comparables referenced in the Honeyman Award. Those comparable communities are the following 12 communities: Appleton, Kenosha, Madison, Racine, Waukesha, West Allis, Eau Claire, Janesville, LaCrosse, Oshkosh, Sheboygan, and Wauwatosa.

⁴The Arbitrator discusses internal comparability under the statutory criterion "Such other factors . . ." below.

Both in the evidence submitted by the Association and in its arguments, the Association emphasized the relationship between salary levels in the City of Green Bay and the cities of Appleton, Kenosha, Racine and Oshkosh. Union Exhibit 33 lists the wage ranking of the City of Green Bay in the base year 2011 (and the years preceding the base year from 2008-2010) and the ranking in 2012, 2013, with projections into 2014. In 2011, Green Bay ranked eighth of the thirteen communities, all twelve comparables and the City. In 2012, whether the City or Union's offers are adopted, the ranking remains the same. In 2013, the Union offer places Green Bay in seventh place just ahead of Oshkosh and the City's offer in ninth just behind Oshkosh. Then in 2014, under the City's proposal, Green Bay would return to eighth place among the projected list of comparables, many of which were not settled at the time of the preparation of Union Exhibit 33. The lack of movement in the ranking of Green Bay among the comparable communities suggests that neither offer alters the relationship of the salaries paid in Green Bay contrasted to those paid by other comparable communities. It suggests that the proposed lift in salary levels is consistent with the wage levels paid by comparable communities.

It is worth noting that only the City of Madison's population exceeds that of Green Bay. According to Union Exhibit 31, Green Bay's population in 2011 was estimated to be 104,510 behind Madison's 234,225 and ahead of Kenosha's 99,650, Racine's 79,204, Waukesha's 71,026, and Oshkosh at 66,371. Sheboygan and Wauwatosa are the smallest communities on this list of comparables at 49,503 for Sheboygan and 46,598 for Wauwatosa.

The application of the comparability criterion in this case is complicated by the need to incorporate both salary increases and the contribution employees will make to Wisconsin retirement. The effect of a wage increase and employee contributions greatly impacts net take home pay. The substantial difference between the parties stems from the manner in which the full contribution towards retirement is achieved. Under the Union offer, employees receive a 1.61% wage increase effective January 1, 2012, when they assume a 1.61% contribution towards the employee share of the then maximum employee share 5.9% contribution towards retirement.

The City proposes no increase in salary in 2012. It proposes that Green Bay Police officers assume the full 6.65% employee share towards retirement effective July 1, 2013. Furthermore, the City offers no wage increase in calendar years 2012 or 2013.

Under the Union offer, effective January 1, 2013, employees would receive a 0.33% across the board wage increase and assume an additional 0.33% contribution towards the employee share of Wisconsin retirement bringing the total employee share of that contribution of the 6.65% total employee share to 1.94%. Then on April 1, 2013, the employee share towards retirement would increase by 1.53% to a total of 3.47% and wage rates would increase across the board effective April 1, 2013, by 1.53%. Similarly, effective July 1, 2013, the employee contribution towards Wisconsin retirement would increase by 3.18% to a total of 6.65%, the total employee share towards Wisconsin retirement, while at the same time the Green Bay officer would receive an across the board wage increase of 0.29% effective July 1, 2013. The Union includes a wage increase two days prior to the expiration of the agreement that it proposes as the successor to the expired agreement in an amount of 2.89%.

The Union proposes a contract that is two years in duration. The City, on the other hand, proposes a four-year term in which the first two years (calendar years 2012 and 2013) employees receive no pay increase. They would receive a pay increase of 2% effective August 24, 2014 and an additional 4% in the fourth and final year of the agreement on February 22, 2015.

The comparability criterion is most telling with regard to the contribution towards retirement paid by employees of comparable employers. The Arbitrator considers only those communities with a contract that falls sometime during the duration proposed either by the Union and/or the City. Police officers in the City of Appleton make no contribution towards retirement, the employee share in 2011 through 2013. Similarly, police officers in Kenosha make no contribution during the term of their agreement that expires in 2012. The same is the case for officers in Racine and in Waukesha, as well as, West Allis. Although the City indicates in

its brief that the City of Madison settled an agreement through calendar year 2015, there is no evidence in the record of that settlement and that by the end of calendar year 2015 Madison Police officers pick up full retirement.

The City of Oshkosh Police agreement was the subject of an arbitration award issued on June 6, 2013 by Arbitrator Sharon Gallagher. She adopted the Union's approach in her case of incremental contribution toward the payment of full employee share to Wisconsin retirement by Oshkosh police officers which is similar to the Union's approach, here.

The officers in Sheboygan pay 4% towards Wisconsin retirement contribution effective January 1, 2012, an additional 1.9% effective January 1, 2013, and a total of 5.9% again would continue into calendar year 2014 while receiving a 1% across the board pay increase on January 1, 2012, an additional 1.5% on July 1, 2012, an additional 1% on January 1, 2013, an additional 1.5% on July 1, 2013, and an additional 1% effective January 1, 2014. The Sheboygan officer would receive a wage increase of at least 6% (not taking into account compounding) while paying 5.9% beginning January 2013 (the full employee share is 6.65% in 2013) .

Police officers in the City of Wauwatosa under a three-year agreement would receive no wage increase in 2011 and would not pick up any additional share of the contribution towards Wisconsin retirement until January 1, 2012, when on that date they would pick up 3% of the employee share towards Wisconsin retirement. Effective January 1, 2012, the Wauwatosa police officer would receive a wage increase of 3%. Then on January 1, 2013, the Wauwatosa officer would pay the full 6.65% employee share towards Wisconsin retirement and receive an additional 3% wage increase effective January 1, 2013.

The comparables demonstrate the unique nature of the City's offer in terms of having Green Bay police officers assume the full cost of the employee contribution to retirement, all at once on July 1, 2013 without any corresponding wage increase through two-thirds of the third year of a four-year agreement. In seven of the comparables by the expiration of 2012, officers do not pay any

contribution towards the employee share of retirement. In LaCrosse and Madison there is no evidence as to what the employees contribute towards the employee share towards retirement and in the remaining three (Oshkosh, Sheboygan and Wauwatosa), the contribution towards retirement occurs incrementally. This evidence provides the strongest support for the Union's proposal.

The Union's wage proposal falls within wage increases provided by comparable communities. The Appleton Police received wage increases in 2012 and 2013, i.e., 1% on January 1, 2012, and an additional 3% on December 31, an additional 1% on June 1, 2013, and an additional 3% on December 1, 2013 (while the employee picks up 0% of the employee share towards Wisconsin retirement). In Kenosha in calendar year 2012 officers receive a 2% wage increase. In Racine, they receive a 1% increase in 2012, a 1% increase in 2013, and a 2% increase in 2014. In Waukesha, officers receive a 1% increase on January 1 and an additional 1% on July 1, 2012. In Janesville the wage increase went into effect January 1, 2012 at 1.5%. In Sheboygan, police officers received a 1% increase in January 1, 2012, 1.5% on July 1, 2012, 1% on January 1, 2013, an additional 1.5% on July 1, 2013, and a 1% increase on January 1, 2014. In Wauwatosa, officers received a 3% increase on January 1, 2012, and a 3% increase on January 1, 2013. Union Exhibit 33 suggests that Eau Claire Police officers last agreement expired in the end of 2011.

This evidence demonstrates that the percentage wage rate increase paid by the comparables support the Union proposed wage increases including the 2.89% increase on the next to the last day of the agreement. The City notes that the lift that results from the multiple (4) increases in 2013 generates a lift of 6.353%. However, the Union wage proposal for 2013 results in a wage level that raises by one ranking, Green Bay to just ahead of Oshkosh, among the comparables. The zero wage increases proposed by the City for 2012 and 2013 are unique to its proposal and are not supported by the external comparables. The City itself proposes to lift Green Bay Police officer wage levels by the end of the 4-year agreement by 6% with 2% and 4% wage increases in 2014 and 2015, respectively.

Comparability in Private Employment

The Union introduced the settlement achieved by Proctor & Gamble and its employees at its Green Bay plant. The data is insufficient on which to base a determination as to which final offer is preferable.

5. Cost of Living

The ten year average increase in the CPI-U index is 2.36%. The 5-year average is 1.68%. The inflation rate for 2013 is projected at 1.80%.

The Union asks the Arbitrator to look at the cost of its proposal rather the effective lift of its proposal over the 2-year period 2012 and 2013. The lift is 6.353%. The City lift of zero in the first two years is not supported by this data. Its proposal lifts rates by 6% by the end of a 4-year agreement.

The City argues that City Police officers fared much better under the agreed settlements with the City between 1992 and 2011 when contrasted to what wage levels would have been if the increases simply tracked the increase in the cost-of-living.

One must consider the net effect of wage increase and contribution to retirement in applying this measure. Although the City offer results in large increases in the out years, the Arbitrator concludes that the cost-of-living criterion more closely tracks the Association offer. This criterion supports the selection of the Union offer.

6. Overall Compensation

The City argues that the Union's reliance in its argument on health insurance and the impact of health insurance changes the City unilaterally made to the design of the health insurance program and the impact of premiums that Green Bay officers must pay, constitutes an illegal argument under the statute 111.77(4)(am). As noted above, the Arbitrator does not rest his decision on the

parties' health insurance proposals. The parties are litigating health insurance proposals in the Court of Appeals. The decision reached herein is independent of health insurance.

Under the heading "overall compensation," it is noteworthy that the City participates in a group health insurance plan(s) that employees are free to take advantage of. It is part of the benefit package employees receive with their employment by the City of Green Bay. This observation does not serve to distinguish the final offers of the parties as a preferred offer for inclusion in a successor agreement.

7. Such Other Factors

Under this criterion, the Arbitrator addresses the internal comparability factor, duration, and the Union's proposal to cap employee contribution towards Wisconsin retirement at 6.65%.

Such Other Factors - Internal Comparability

The City builds its final offer on the basis of internal comparability. The City emphasizes that this Police unit is the only group of the approximately 1,000 employees that has not agreed to pick up the employee share of Wisconsin retirement in July 2011 for general employees and on January 1, 2012 for Firefighters and Transit employees. The March 2011 agreement with general employees that included payment of retirement beginning July 2011 will expire at the end of calendar year 2013. The agreement was negotiated in response to the Legislature passing Acts 10 and 32.

Transit employees settled with the City with an agreement to contribute fully to the employee share of Wisconsin retirement effective January 1, 2012 even though this group of employees retains the right to interest arbitration.

Firefighters received an increase in EMT pay that amounted to less than 1% in calendar year 2012. The first general increase across the board that the

Firefighters received in their agreement with the City covering calendar years 2012, 2013, and 2014 went into effect on April 1, 2013, 15 months after their agreement to pay the employee share of Wisconsin retirement. The City argues that with regard to the protective services the Firefighter settlement establishes a settlement pattern that is further supported by the settlements the City achieved with its other represented general employee groups.

This 15-month delay serves as the basis for the City's position to withhold from the Police unit any wage increase in 2013 and to delay that increase until August 24, 2014. The Police, thereby, would experience the same delay period between paying the full employee share of the contribution towards Wisconsin retirement, which they do on July 1, 2013, and the receipt of a general across the board wage increase in August 2014. The City argues that by replicating the structure of settlement it achieved with the Firefighters and by requiring the Police unit to serve a hiatus period between the pickup of the employee share of Wisconsin retirement and the receipt of an across the board wage increase serves employee morale. It allows the City to treat all its employees in an equitable manner.

Other than making the argument that employee morale, particularly among Firefighters, would suffer if the police unit settlement varied significantly from the structure of the settlement reached with other employee units, there is no evidence to support the claim. No one testified concerning employee morale. No expert witness provided credible evidence that a 15-month hiatus between making a pension contribution and the receipt of an across the board wage increase or any other manner in which a settlement between the City and the Police unit that differed from the settlement pattern with the Firefighter unit would tend to lower employee morale. The Union argues that the legislative adoption of Acts 10 and 32 serve to lower employee morale of general employees and Firefighter personnel, more than any difference in the pattern of settlement between Police and Firefighters in this round of bargaining.

Frequently, arguments are made both by union and employer advocates concerning employee morale in order to support their respective positions in an

interest dispute. Here, the City builds its argument and asserts that maintenance of employee morale as a central pillar supporting its offer. The City's offer will sustain employee morale; the Union's will undermine it.

Ordinarily, the Arbitrator would not address what usually is a make weight argument concerning the morale of one group of employees or of the entire work force as a result of the adoption by the Arbitrator of either the Union or the Employer offer. It is an easy argument to make, but a difficult one to prove. Since the City makes morale a central argument to its case, the Arbitrator cannot ignore it.

If employee morale suffers in the general employee unit or among Firefighters, then the boost in morale comes at the expense of the Police unit. There is no evidence in this record that the morale of Police officers in this unit, would suffer were the Arbitrator to accept the City's final offer. However, presumably, the Union final offer has the support of Association membership behind it. To that extent, it reflects the rejection by Police officers in the City of Green Bay of the City's offer in favor of the Association offer. This would support an argument that employee morale in the Police unit would be bolstered by adoption of the Union offer. As noted above, there is no evidence to suggest that accepting the Union's offer would cause concern among the leaders of the general employee unions, the Firefighters, or the Transit employee unions or any individuals in those bargaining units.

The more serious argument the City makes is its equity claim. It argues that its final offer is equitable to all its employees. This argument of the City fails. The City offers the Firefighter employees a 2% wage increase on April 1, 2013 and an additional 4% wage in 2014. There is no economic need for the City to provide a zero wage increase in 2013 to its Police unit.

The City points to the fact that all employees received a zero wage increase in 2012. On the other hand, the Union proposal for a wage increase on January 1, 2012 generates a \$966 payout in addition to the average base salary of a Police

officer which the parties approximated at \$60,000. That sum approximates the amount the Police officer would pay towards the employee share of retirement.

City Exhibit 17A presents a historical pattern of wage settlements for all employees, including administrators, from 1991 through 2014. Focusing on settlements between the Fire and Police, with the exception of the Firefighters receiving a 1/100 of a percent greater salary percentage increase in 1994 and 6/10 of a percent greater wage increase in 1995, the two units describe parity in percentage settlements put into effect in negotiations among the employer and the Firefighter and Police units. In the base year, 2011, both Fire and Police settled at 2.5%. In 2012, the Firefighters, as did all other employees of the City with the exception of Police, received a zero percent wage increase. In April 2013, the firefighters will receive a 2% increase.

In October 2013 administrators and bargaining units of general employees are to receive a 2% increase. There does not appear to be a 15-month period in effect for the 2% across the board wage increase for general employees, although they began contributing towards Wisconsin retirement in **July 2011**. The hiatus is far greater than 15-months. For 2014, Firefighters would begin to receive a 4% wage increase on January 1.

The City proposal to Fire and Police, as described in City Exhibit 2 Tab 14, takes into account Wisconsin contributions to Wisconsin retirement. The net take home pay of Firefighters on December 30, 2013 would be \$57,294. For police after the 2.89% increase it proposes to take effect on December 30, the net pay would be \$59,153. Under the Union offer the agreement would expire on December 31, 2013.

Under the City proposal, the net pay of Firefighters at the conclusion of 2014 would be \$61,200 in base pay less \$4,455 in contribution towards Wisconsin retirement plus the 4% wage increase which translates to \$2,448 for a net pay of \$59,193 at the expiration of the Firefighter contract on December 31, 2014.

The City offer would leave the Police unit at a net pay level comparable to Firefighters by the conclusion of the term of this four-year agreement in **2015** at \$59,708. The Firefighters net pay, wage less the contribution to Wisconsin retirement would be at \$59,193, when their current contract expires in December **2014**.

Again, the parties approximate the Green Bay Police Officer average salary at \$60,000. It would not increase under the City's proposal for a zero wage increase both in 2012 and 2013. By 2014, the employee share of the retirement contribution is set to increase to 7%. That reduces the base pay from \$60,000 to \$56,800.⁵

On the other hand, the net pay of Police officers at the end of its proposed offer would be \$59,153 by December 31, 2013 as contrasted to the Firefighter net pay at the end of 2014 a year later at \$59,193. Furthermore, the 2.89% wage increase proposed by the Police union goes into effect December 30, 2013, but the cost of this increase is felt over calendar year 2014. Only \$10 of the 2.89% increase occurs in 2013. Both the City's and the Union's offers destroy 20 years of parity in pay between the Police and Firefighter units. No matter which offer is incorporated into a successor agreement, the parties in their future negotiations will have to repair the damage they do through their proposals in this case.

Although the City is not entirely consistent in its settlements with all its bargaining units, the Union offer is at substantial variance with the City's settlements with its other units. Under the Union offer, Police would receive a raise in 2012, when no other employee group received any wage increase. All employees except for Police pay the full cost of Wisconsin retirement by January 2012. The Police do not assume that cost until July 1, 2013. There is no doubt that the internal comparability provides the most support for adoption of the City offer.

⁵City Exhibit 2, Tab 14, contains another deduction for health insurance. Since the Arbitrator does not consider health insurance in the context of the two final offers, this analysis is limited to wage and WRS contribution.

Such Other Factors - Duration

When all is said and done, the important internal comparability factor supports the acceptance of the City offer over that of the Union, but not to the extent that the City relies on in its presentation of its offer in the context of this arbitration proceeding. Both parties would have benefitted from a 3-year rather than a 2 and 4 year proposal. The third year, 2014, should have replicated the 4% increase provided to the Firefighters. The Firefighters received the 2% increase in April 2013. General employees are scheduled to receive their 2% increase in October of 2013. A proposal to provide police with a 2% increase in 2013 and an additional 4% in 2014 would have left the pattern of settlement between Firefighter and Police much closer than the final offers proposed herein.

Neither party proposes a 3-year settlement. A 4-year agreement is, in the experience of this Arbitrator, unusual. Sometimes parties settle for a 3-year and a 1-year or a 2-year and a 2-year, but rarely a flat 4-year agreement, particularly when the statute impacting general employees pre-Acts 10 and 32 limited agreements to three years. It is only through a 4-year agreement that the City generates any meaningful wage increases for its Police officers.

The Union, on the other hand, introduced the testimony of economist David Ward. He advised the Association at the end of 2012 and the beginning of 2013, when the parties were in negotiations and during the investigation by the Wisconsin Employment Relations Commission investigator, General Counsel Peter Davis, that a turnaround in the economy might well create inflationary pressures that would be difficult to anticipate. He suggested, therefore, a short duration to their agreement. Consequently, the Union proposes a 2-year agreement.

The Arbitrator decides this case at the end of 2013. It appears that the Federal Reserve will continue its policies through 2014. There are no signs at this juncture of inflationary pressures that would suggest the adoption of a shorter term agreement. An agreement that ran through calendar year 2014, a 3-year agreement, would have been preferred. An agreement that goes all the way out through 2015 has no support either among the comparables or internally. There

is no settlement in the City of Green Bay that goes out to 2015. For these reasons, the Arbitrator finds the Union's offer for a shorter duration preferable to that of the City's.

Summary

Before turning to consider the last issue under the Such Other Factors criterion, it is useful to review the state of this proceeding, to this point. The Arbitrator found that the economic conditions during this transitional period from a severe recession to a period of economic improvement should receive much greater weight than the totality of all the other factors. As noted above, if in order to concretize the weight the Arbitrator affords this factor, if the total points to be awarded considering all factors were 100, the Arbitrator would accord economic conditions 60 points and the Union proposal 35 of those 60 and the City's offer with 25 points. The Arbitrator adopts this point analogy to demonstrate that the Arbitrator economic conditions in Green Bay more than 51% of the weight to be accorded all the other statutory factors combined. The Legislature did not limit at the upper end, the weight to be accorded economic conditions. Under the statute, the Arbitrator should provide no less than 51% or at least a weight greater than the totality of all the other factors considered under 111.70(4)(bm).

The Arbitrator finds that the factors the lawful authority of the employer, stipulation of the parties, interest and welfare of the public, overall compensation and changes in the foregoing do not serve to distinguish between the parties' offers.

The external comparability criterion strongly supports the adoption of the Union offer. Internal comparability provides strong support to the adoption of the City offer. The cost of living criterion provides support for the adoption of the Union offer. To this point, in light of the greater weight the Arbitrator gives to economic conditions, the Union offer would be preferred.

Such Other Factors - Caps and Reopener

The Union proposes to cap the employee contribution towards Wisconsin retirement at 6.65%. Should that percentage increase in 2014—which it has—then the employee would continue to pay 6.65% in 2014 and the Employer would pick up the additional 0.35% of the employee share of the employee contribution to retirement.

When these parties sat down to bargain a successor to the 2009-2011 Agreement, an agreement that they would enter post the passage of Acts 10 and 32, their challenge was to incorporate substantial employee contributions towards Wisconsin retirement and generate net pay that at the conclusion of the term of the agreement either approximated the net salaries at the beginning of the term of the agreement or provided at least some increase in net pay over the term of the agreement.

The Union proposed to increase wages and employee contribution towards retirement over a year and a half period where the wages would more or less offset the contributions employees would make towards Wisconsin retirement. The Arbitrator in the discussion above prefers this method, as did Arbitrator Gallagher in her Award involving the Police unit in the City of Oshkosh recently decided in June 2013.

By capping the employee contribution, the Union undermines the very effort both parties make in their offers to absorb the employee contribution to retirement. The Union proposal would leave the parties in a position, in which they would have to engage in the same fight to achieve a successor to the 2012-2013 agreement proposed by the Union. The Union's proposal to cap the contribution for Wisconsin Retirement is counter productive. It is not supported by external comparables nor is it supported by any agreement by the City of Green Bay with any of its other units. It materially and substantially detracts from the viability of its offer. It has a negative impact on its offer to the same extent that external comparability supports its proposal.

With regard to the proposal for a reopener should the courts adopt the Union's interpretation of the statutory language concerning health insurance, it is not necessary in a 2-year proposal; it is necessary in a 4-year proposal. The City does not include a reopener in its offer. It should have. Failure to address the circumstance where the courts would permit the Union the opportunity for greater input into the health insurance issue on the surface appears equitably preferable. However, a benefit such as health insurance is one which arbitrators and union and employer negotiators are loathe to carve out and adopt a structure or contributions that differ materially from unit to unit. Administration of the health benefit would become a key stumbling block to reopened negotiations over the health benefit issue. So, a reopener may appear to be attractive at the outset, but under a circumstance such as the one here, where the pattern is set for all units except the Police, should the courts permit the Police to carve out its own course with regard to that benefit, the Arbitrator does not find that the Union's proposal for a reopener under these circumstances is compelling.

SELECTION OF THE FINAL OFFER

It should be clear from the above discussion that the Arbitrator finds the Union's offer that is based on the incremental contribution towards employee share of Wisconsin retirement through wage increases that mirror the amount of those contributions in calendar years 2012 and 2013 far more preferable to the structure of the City's offer. The notion that a 15-month hiatus must separate employee assumption of retirement contribution before an across the board wage increase may be granted that is the purported underpinning of the City's offer is not replicated with the general municipal employees and is only replicated with the Firefighters. Both the City and Union offers greatly disturb the parity pattern established by these parties over in excess of 20 years of wage settlements with these two bargaining units.

The Union proposal to cap employee contribution towards retirement at 6.65%, when the evidence establishes that it has already increased to 7%, is unsupported in this record. There is no evidence that any comparable police unit has adopted such caps. In the recently decided City of Oshkosh case, there is no

evidence that the police union proposed a cap on employee contribution towards the employee share of Wisconsin retirement. The adoption of such a cap is nowhere to be found among other comparables and is certainly not a part of the agreements that the City reached with its other bargaining units.

Furthermore, and what the Arbitrator finds most disturbing about the Union's offer, it would require the parties to engage the issue of employee contribution towards Wisconsin retirement in another round of bargaining. The parties have enough to deal with as a result of their failure to propose a 3-year agreement with the only issue being whether employees pick up the employee share of retirement all at once as proposed by the City or incrementally as proposed by the Union. A 3-year agreement would have better served these parties.

The Arbitrator must select between the two final offers. At the end of the day, the proposal to cap the employee contribution towards employee retirement so damages the Union's proposal that the Arbitrator selects a seriously flawed City offer, an offer flawed by a proposal for two years of no increase and by wage increases particularly in the fourth year at a level that may well not be supported by an increase in the cost of living or by the finances of the City itself. The Arbitrator adopts the City's offer even though it does material damage to the parity that exists between wage increases between the Firefighter and Police units and despite the fact that its offer is not internally consistent in that all the settlements do not have a 15-month hiatus between the assumption of contribution towards Wisconsin retirement and an across the board wage increase. The cap proposal is that damaging to the Union's offer that it tips the balance, even with economic conditions favoring the adoption of the Union offer.

On the basis of the above discussion, the Arbitrator selects the final offer of the City of Green Bay for inclusion in an agreement between the Green Bay Professional Police Association and the City of Green Bay that shall be in effect from January 1, 2012 through December 31, 2015.

Dated at Madison, Wisconsin, this 25th day of November, 2013.

A handwritten signature in cursive script, appearing to read "Sherwood Malamud".

Sherwood Malamud
Arbitrator